

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 293

Motor Vehicle Title Transfer

**SPONSOR(S):** Full Appropriations Council on Education & Economic Development; Economic Development & Community Affairs Policy Council; and Rogers

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 906

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	20 Y, 0 N	Brown	Miller
2)	Economic Development & Community Affairs Policy Council	14 Y, 0 N, As CS	Brown	Tinker
3)	Full Appropriations Council on Education & Economic Development	19 Y, 0 N, As CS	Rayman	Martin
4)				
5)				

### SUMMARY ANALYSIS

CS/CS/HB 293 amends s. 319.22, F.S., relating to requirements governing the transfer of title for motor vehicles and mobile homes. The bill requires a transferred certificate of title or other DHSMV-approved form to be submitted within 30 days of a transfer between parties (excluding licensed motor vehicle dealers or insurers). Notification is currently authorized, but not required.

The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to collect certain information and provide certain notices to buyers and sellers. The certificate of title or department-approved form must include the vehicle information number, the buyer's full name and personal or business information along with other information required by DHSMV.

The bill also provides an exception to current forfeiture requirements regarding abandoned vehicles in s. 319.33(7)(a), F.S. CS/CS/HB 293 provides that un-identifiable motor vehicles or mobile homes found on private property may, under certain limited circumstances, be disposed of through the lost and unclaimed property provisions of s. 705.103, F.S., rather than being treated as contraband under the Florida Contraband Forfeiture Act. This may only be accomplished if the following criteria are met:

- the motor vehicle or mobile home is found abandoned on private property;
- there is no discernable manner by which an owner, potential owner, or anyone having any interest in the vehicle can be ascertained by a law enforcement agency; and
- if the owner of the private property disclaims any ownership interest in the vehicle whatsoever.
- the DHSMV may assign a replacement vehicle identification number and it shall not be necessary for assignment to be directed by court order.

The bill does not appear to have a significant fiscal impact, and has an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation:

Section 319.22, F.S., establishes requirements governing the transfer of title for motor vehicles and mobile homes. A purchaser of a motor vehicle or mobile home cannot obtain marketable title until he or she is issued a certificate of title.<sup>1</sup> The law ceases to recognize the seller as owner or co-owner when the title is properly endorsed and delivered to the purchaser or DHSMV.<sup>2</sup> In the case of a private or casual sale (a sale between persons not licensed as dealers or insurers), the state will not transfer title unless the name of the seller is shown as the owner on the face of the title.<sup>3</sup> In addition, the state will not transfer title unless the sales price is entered in the appropriate place on the face of the certificate.<sup>4</sup>

When a motor vehicle is sold in a bona fide casual sale, the certificate of title is endorsed by the seller and the sales price is entered on the face of the certificate. The certificate or department-approved form is typically submitted *by the buyer* to the tax collector or DHSMV for transfer with an application for a new certificate of title and remittance of sales tax. A new certificate of title is then issued to the buyer. This process allows both for recording of ownership of the motor vehicle and provides an opportunity for sales tax to be assessed on the purchase.

A seller is entitled to submit a department-approved form notifying the DHSMV of a bona-fide sale. This notification serves to sever any liability for future liabilities related to the motor vehicle.<sup>5</sup>

It is a first degree misdemeanor for a buyer or a seller to knowingly attempt to transfer a title without the purchaser's name also appearing on the title.<sup>6</sup> This requirement was adopted in 2002.<sup>7</sup>

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<sup>1</sup> S. 319.22(1), F.S.

<sup>2</sup> S. 319.22(2)(a)1.-2., F.S.

<sup>3</sup> S. 319.22(3), F.S.

<sup>4</sup> S. 319.22(4), F.S.

<sup>5</sup> S. 319.22(2)(a), F.S.

<sup>6</sup> S. 319.22(5), F.S.

<sup>7</sup> See S. 9, 2002-235, Laws of Florida

It is unlawful to forge or falsify a certificate of title to a motor vehicle or mobile home,<sup>8</sup> to give false identifying information regarding a title,<sup>9</sup> or to attempt to obtain or pass a title, knowing that the motor vehicle or mobile home is stolen.<sup>10</sup>

It is also unlawful to possess, sell, conceal, or dispose of a motor vehicle or mobile home, or a major component of a motor vehicle or mobile home, on which the Vehicle Identification Number (VIN) or other identifying number used by a state agency, has been "removed, covered, altered, or defaced," with knowledge of such defacement.<sup>11</sup>

Violations of these provisions are third-degree felonies, and any motor vehicle used in violation of s. 319.33, F.S., may be seized by a law enforcement agency, among other punishments provided in ss. 775.082, 775.083, and 775.084, F.S.

Section 319.33(7), F.S., provides that a motor vehicle or mobile home rendered un-identifiable because its identifying numbers have been removed, defaced, or otherwise obscured, shall be treated as contraband by a "seizing law enforcement agency", and disposed of pursuant to the Florida Contraband Forfeiture Act (ss. 932.701 - 932.704, F.S.)

The Florida Contraband Forfeiture Act (FCFA) is currently used to impound and sell vehicles used to transport illegal drugs<sup>12</sup> and a myriad of other illegal or unlicensed items, from gambling paraphernalia<sup>13</sup> to cigarettes<sup>14</sup> to undocumented cars,<sup>15</sup> boats,<sup>16</sup> and planes.<sup>17</sup>

Section 705.103, F.S., establishes procedures for lost and abandoned property generally. For large abandoned items such as vehicles, the statute requires law enforcement officers to place a large (at least 8" by 10") weatherproof sign on the property, providing a notice to the owner "and all persons interested in the attached property." The sign puts such persons on notice that the item must be removed within 5 days, or it will be disposed of "pursuant to chapter 705, Florida Statutes."

This section also requires that if the abandoned item is a vehicle, the local law enforcement agency must contact DHSMV, and must ascertain and send certified notices to any owners-of-record and to lienholders.

If the owner or interested party has not removed the vehicle or item within the required timeframes, local law enforcement may take abandoned property and:

- Retain it for local use,
- Trade it to another local or state agency,
- Donate the property to a charity,
- Sell the property, or
- Notify the appropriate refuse removal service.

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<sup>8</sup> Section 319.33(1)(a), F.S.

<sup>9</sup> Section 319.33(1)(e), F.S.

<sup>10</sup> Section 319.33(1)(c), F.S.

<sup>11</sup> Section 319.33(1)(d), F.S.

<sup>12</sup> Section 893.12, F.S.

<sup>13</sup> Section 849.36, F.S.

<sup>14</sup> Section 210.185, F.S.

<sup>15</sup> Section 320.20, F.S.

<sup>16</sup> Section 328.07, F.S.

<sup>17</sup> Section 329.11, F.S.

If the property is sold at auction, the law enforcement agency must reserve the proceeds for one year (less expenses), and the rightful owner of the property has one year to claim the net proceeds of the sale. At the expiration of this period, if the proceeds are unclaimed, the balance shall be deposited into the State School Fund.

### Potential Changes

CS/CS/HB 293 requires sellers to acknowledge a bona fide sale by submitting the department-approved form within 30 days of the transfer. The bill also amends s. 319.22, F.S., to ensure that DHSMV collects certain information and provides certain notices to buyers and sellers.

The certificate of title or department-approved form must include the VIN, the buyer's full name and personal or business information (e.g., driver's license number, identification card number, or federal employer identification number), along with other information required by DHSMV.

The bill amends s. 319.33(7)(a), F.S., to provide that if certain conditions are met, an abandoned and unidentifiable motor vehicle or mobile home need not be disposed of pursuant to the Florida Contraband Forfeiture Act, but may instead be disposed of by the procedure for lost or unclaimed property contained in s. 705.103, F.S. This alternative is available if:

- the motor vehicle or mobile home is found abandoned on private property;
- there is no discernable manner by which an owner, potential owner, or anyone having any interest in the vehicle can be ascertained by a law enforcement agency; and
- if the owner of the private property disclaims any ownership interest in the vehicle whatsoever.
- the DHSMV may assign a replacement vehicle identification number and it shall not be necessary for assignment to be directed by court order.

#### B. SECTION DIRECTORY:

**Section 1** Amends s. 319.22, F.S., providing additional requirements for notice of transfer to DHSMV; requiring an owner or co-owner who has made a sale or transfer of a motor vehicle to notify DHSMV; providing requirements for such notification; providing applicability; requiring the department to provide certain information to the motor vehicle owner or co-owner when issuing a certificate of title.

**Section 2** Amends s. 319.33(7)(a), F.S.; providing alternative disposition for certain motor vehicle and mobile homes abandoned on private property. The DHSMV may assign a replacement vehicle identification number and it shall not be necessary for assignment to be directed by court order.

**Section 3** Provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

Insignificant fiscal impact.

##### 2. Expenditures:

Insignificant fiscal impact.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

N/A

2. Expenditures:

N/A

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

DHSMV has indicated that there will be no fiscal impact as a result of CS/CS/HB 293. Regarding the abandoned vehicle provision, the Department of Financial Services indicates that it does get a small amount of cash from local law enforcement now, but there is no information as to the type of disposed asset for which they are receiving money. The department advises the impact of the section is indeterminate and probably insignificant.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill permits the Department to make the additional information available to buyers and sellers "on the certificate of title or on a separate form that is included with the certificate." This language presumably permits the Department to use its current rulemaking authority to add material to relevant documents.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 4, 2009, the Roads, Bridges, and Ports Policy Committee reported the bill favorably without amendment.

On March 11, 2009, the Economic Development & Community Affairs Policy Council adopted an amendment and reported the bill favorably as a committee substitute. The amendment provides that un-identifiable motor vehicles or mobile homes found on private property may, under certain limited circumstances, be disposed of through the lost and unclaimed property provisions of s. 705.103, F.S., rather than being treated as contraband under the Florida Contraband Forfeiture Act.

On March 23, 2009, the Full Appropriations Council on Education & Economic Development adopted an amendment and reported the bill favorably as a committee substitute. The amendment provides that the DHSMV may assign a replacement vehicle identification number without a court order.